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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

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15 SECURITIES AND EXCHANGE  
16 COMMISSION,

17 Plaintiff,

18 vs.

19 JERRY L. BURDICK,

20 Defendant.

Case No. \_\_\_\_\_

'08 CV 1390 JAH JMA

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CONSENT OF DEFENDANT  
JERRY L. BURDICK

CP

**CONSENT OF DEFENDANT JERRY L. BURDICK**

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3 1. Defendant Jerry L. Burdick ("Defendant") acknowledges having been  
4 served with the complaint in this action, enters a general appearance, and admits  
5 the Court's jurisdiction over Defendant and over the subject matter of this action.

6 2. Without admitting or denying the allegations of the complaint (except  
7 as to personal and subject matter jurisdiction, which Defendant admits), Defendant  
8 hereby consents to the entry of the Final Judgment in the form attached hereto (the  
9 "Final Judgment") and incorporated by reference herein, which, among other  
10 things:

11 (a) permanently restrains and enjoins Defendant from violations of  
12 Section 17(a)(2) and (3) of the Securities Act of 1933 [15  
13 U.S.C. § 77q(a)(2) and (3)] and Rules 13a-14, 13b2-1, and  
14 13b2-2 promulgated thereunder [17 C.F.R. §§ 240.13a-14,  
15 240.13b2-1, and 240.13b2-2], and aiding and abetting violations  
16 of Sections 13(a) and 13(b)(2)(A) of the Securities Exchange  
17 Act of 1934 [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)], and  
18 Rules 12b-20 and 13a-13 promulgated thereunder [17 C.F.R.  
19 §§ 240.12b-20 and 240.13a-13]; and

20 (b) orders Defendant to pay a civil penalty in the amount of  
21 \$25,000.00 under Section 20(d) of the Securities Act [15 U.S.C.  
22 § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §  
23 78u(d)(3)].

24 3. Defendant agrees that he shall not seek or accept, directly or  
25 indirectly, reimbursement or indemnification from any source, including but not  
26 limited to payment made pursuant to any insurance policy, with regard to any civil  
27 penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of  
28 whether such penalty amounts or any part thereof are added to a distribution fund

1 or otherwise used for the benefit of investors. Defendant further agrees that he  
2 shall not claim, assert, or apply for a tax deduction or tax credit with regard to any  
3 federal, state, or local tax for any penalty amounts that Defendant pays pursuant to  
4 the Final Judgment, regardless of whether such penalty amounts or any part thereof  
5 are added to a distribution fund or otherwise used for the benefit of investors.

6 4. Defendant waives the entry of findings of fact and conclusions of law  
7 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

8 5. Defendant waives the right, if any, to a jury trial and to appeal from  
9 the entry of the Final Judgment.

10 6. Defendant enters into this Consent voluntarily and represents that no  
11 threats, offers, promises, or inducements of any kind have been made by the  
12 Commission or any member, officer, employee, agent, or representative of the  
13 Commission to induce Defendant to enter into this Consent.

14 7. Defendant agrees that this Consent shall be incorporated into the Final  
15 Judgment with the same force and effect as if fully set forth therein.

16 8. Defendant will not oppose the enforcement of the Final Judgment on  
17 the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal  
18 Rules of Civil Procedure, and hereby waives any objection based thereon.

19 9. Defendant waives service of the Final Judgment and agrees that entry  
20 of the Final Judgment by the Court and filing with the Clerk of the Court will  
21 constitute notice to Defendant of its terms and conditions. Defendant further  
22 agrees to provide counsel for the Commission, within thirty days after the Final  
23 Judgment is filed with the Clerk of the Court, with an affidavit or declaration  
24 stating that Defendant has received and read a copy of the Final Judgment.

25 10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the  
26 claims asserted against Defendant in this civil proceeding. Defendant  
27 acknowledges that no promise or representation has been made by the Commission  
28 or any member, officer, employee, agent, or representative of the Commission with

1 regard to any criminal liability that may have arisen or may arise from the facts  
2 underlying this action or immunity from any such criminal liability. Defendant  
3 waives any claim of Double Jeopardy based upon the settlement of this proceeding,  
4 including the imposition of any remedy or civil penalty herein. Defendant further  
5 acknowledges that the Court's entry of a permanent injunction may have collateral  
6 consequences under federal or state law and the rules and regulations of self-  
7 regulatory organizations, licensing boards, and other regulatory organizations.  
8 Such collateral consequences include, but are not limited to, a statutory  
9 disqualification with respect to membership or participation in, or association with  
10 a member of, a self-regulatory organization. This statutory disqualification has  
11 consequences that are separate from any sanction imposed in an administrative  
12 proceeding. In addition, in any disciplinary proceeding before the Commission  
13 based on the entry of the injunction in this action, Defendant understands that he  
14 shall not be permitted to contest the factual allegations of the complaint in this  
15 action.

16 11. Defendant understands and agrees to comply with the Commission's  
17 policy "not to permit a defendant or respondent to consent to a judgment or order  
18 that imposes a sanction while denying the allegations in the complaint or order for  
19 proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant  
20 agrees: (i) not to take any action or to make or permit to be made any public  
21 statement denying, directly or indirectly, any allegation in the complaint or  
22 creating the impression that the complaint is without factual basis; and (ii) that  
23 upon the filing of this Consent, Defendant hereby withdraws any papers filed in  
24 this action to the extent that they deny any allegation in the complaint. If  
25 Defendant breaches this agreement, the Commission may petition the Court to  
26 vacate the Final Judgment and restore this action to its active docket. Nothing in  
27 this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take  
28

1 legal or factual positions in litigation or other legal proceedings in which the  
2 Commission is not a party.

3 12. Defendant hereby waives any rights under the Equal Access to Justice  
4 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any  
5 other provision of law to seek from the United States, or any agency, or any  
6 official of the United States acting in his or her official capacity, directly or  
7 indirectly, reimbursement of attorney's fees or other fees, expenses, or costs  
8 expended by Defendant to defend against this action. For these purposes,  
9 Defendant agrees that Defendant is not the prevailing party in this action since the  
10 parties have reached a good faith settlement.

11 13. In connection with this action and any related judicial or  
12 administrative proceeding or investigation commenced by the Commission or to  
13 which the Commission is a party, Defendant (i) agrees to appear and be  
14 interviewed by Commission staff at such times and places as the staff requests  
15 upon reasonable notice; (ii) will accept service by mail or facsimile transmission of  
16 notices or subpoenas issued by the Commission for documents or testimony at  
17 depositions, hearings, or trials, or in connection with any related investigation by  
18 Commission staff; (iii) appoints Defendant's undersigned attorney as agent to  
19 receive service of such notices and subpoenas; (iv) with respect to such notices and  
20 subpoenas, waives the territorial limits on service contained in Rule 45 of the  
21 Federal Rules of Civil Procedure and any applicable local rules, provided that the  
22 party requesting the testimony reimburses Defendant's travel, lodging, and  
23 subsistence expenses at the then-prevailing U.S. Government per diem rates; and  
24 (v) consents to personal jurisdiction over Defendant in any United States District  
25 Court for purposes of enforcing any such subpoena.

26 14. Defendant agrees that the Commission may present the Final  
27 Judgment to the Court for signature and entry without further notice.  
28

1 15. Defendant agrees that this Court shall retain jurisdiction over this  
2 matter for the purpose of enforcing the terms of the Final Judgment.

3 Dated: 7/28/08  
4

Jerry L. Burdick  
Jerry L. Burdick

5  
6 On JULY 28th, 2008, JERRY L. BURDICK, a person known to  
7 me, personally appeared before me and acknowledged executing the foregoing  
8 Consent.  
9

Michael A. Garcia  
Notary Public  
Commission expires: 8-16-2009

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11  
12 Approved as to form:



13  
14 David J. Schindler, Esq.  
15 Latham & Watkins, LLP  
16 Attorneys for Defendant  
17 JERRY L. BURDICK  
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5 Attorneys for Plaintiff

6 Securities and Exchange Commission

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11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**  
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14 SECURITIES AND EXCHANGE  
15 COMMISSION,

16 Plaintiff,

17 vs.

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19 JERRY L. BURDICK,

20 Defendant.  
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Case No. \_\_\_\_\_

**[PROPOSED] FINAL JUDGMENT  
AS TO DEFENDANT JERRY L.  
BURDICK**

**FINAL JUDGMENT AS TO DEFENDANT JERRY L. BURDICK**

The Securities and Exchange Commission (the "Commission") having filed a Complaint and Defendant Jerry L. Burdick ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

**I.**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a)(2) and (3) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)(2) and (3)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (b) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

**II.**

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined



1 from aiding and abetting an issuer's filing of quarterly reports with the  
2 Commission on Forms 10-Q that fail to contain material information necessary to  
3 make the required statements in the Forms 10-Q, in light of the circumstances in  
4 which they are made, not misleading, in violation of Section 13(a) of the Securities  
5 Exchange Act of 1934 [15 U.S.C. § 78m(a)], and Rules 12b-20 and 13a-13  
6 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-13].

7 III.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that  
9 Defendant and Defendant's agents, servants, employees, attorneys, and all persons  
10 in active concert or participation with them who receive actual notice of this Final  
11 Judgment by personal service or otherwise are permanently restrained and enjoined  
12 from aiding and abetting any violation of Section 13(b)(2)(A) of the Exchange Act  
13 [15 U.S.C. § 78m(b)(2)(A)] by knowingly providing substantial assistance to an  
14 issuer in failing to make and keep books, records, and accounts, which, in  
15 reasonable detail, accurately and fairly reflect the transactions and disposition of  
16 the assets of the issuer.

17 IV.

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that  
19 Defendant and Defendant's agents, servants, employees, attorneys, and all persons  
20 in active concert or participation with them who receive actual notice of this Final  
21 Judgment by personal service or otherwise are permanently restrained and enjoined  
22 from violating Exchange Act Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1] by,  
23 directly or indirectly, falsifying or causing to be falsified, any book, record or  
24 account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §  
25 78m(b)(2)(A)].

26 V.

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that  
28 Defendant and Defendant's agents, servants, employees, attorneys, and all persons

1 in active concert or participation with them who receive actual notice of this Final  
2 Judgment by personal service or otherwise are permanently restrained and enjoined  
3 from violating Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14] by  
4 falsely certifying that:

5 (a) any required issuer report does not contain any untrue statement of a  
6 material fact or omit to state a material fact necessary to make the  
7 statements made, in light of the circumstances under which such  
8 statements were made, not misleading with respect to the period  
9 covered by the report; and

10 (b) the information contained in the report fairly presents in all material  
11 respects the financial condition, results of operations, and cash flows  
12 of the issuer as of, and for the periods presented in the report.

13 VI.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that  
15 Defendant and Defendant's agents, servants, employees, attorneys, and all persons  
16 in active concert or participation with them who receive actual notice of this Final  
17 Judgment by personal service or otherwise are permanently restrained and enjoined  
18 from violating Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2] by  
19 making or causing to be made, or causing another person to omit or state, a  
20 materially false or misleading statement, or omitting to state a material fact in  
21 order to make statements made, in light of the circumstances under which such  
22 statements were made, not misleading to an accountant in connection with (i) an  
23 audit or examination of financial statements required to be made pursuant to the  
24 Exchange Act regulations, or (ii) the preparation or filing of reports or documents  
25 required to be filed with the Commission pursuant to Exchange Act regulations or  
26 otherwise.

27 VII.

28 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that

1 Defendant is liable for a civil penalty in the amount of \$25,000.00 pursuant to  
2 Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the  
3 Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this obligation by  
4 paying \$25,000.00 within ten (10) business days after entry of this Final Judgment  
5 by certified check, bank cashier's check, or United States postal money order  
6 payable to the Securities and Exchange Commission. The payment shall be  
7 delivered or mailed to the Office of Financial Management, Securities and  
8 Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-  
9 3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying  
10 Jerry L. Burdick as a defendant in this action; setting forth the title and civil action  
11 number of this action and the name of this Court; and specifying that payment is  
12 made pursuant to this Final Judgment. Defendant shall pay post-judgment interest  
13 on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall  
14 remit the funds paid pursuant to this paragraph to the United States Treasury.

15 VIII.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the  
17 Consent is incorporated herein with the same force and effect as if fully set forth  
18 herein, and that Defendant shall comply with all of the undertakings and  
19 agreements set forth therein.

20 IX.

21 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this  
22 Court shall retain jurisdiction of this matter for the purposes of enforcing the terms  
23 of this Final Judgment.

24  
25 Dated: \_\_\_\_\_

26  
27 \_\_\_\_\_  
28 UNITED STATES DISTRICT JUDGE